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**MEMORANDUM OF UNDERSTANDING
BY AND AMONG
CALIFORNIA DEPARTMENT OF FISH AND GAME
CALIFORNIA COASTAL COMMISSION
AND
CALIFORNIA RESOURCES AGENCY**

This Memorandum of Understanding ("MOU") implements a policy of coordination and cooperation by and among the California Department of Fish and Game ("CDFG"), the California Coastal Commission ("CCC"), and the California Resources Agency ("the Resources Agency") to meet their common commitment to future coastal habitat conservation planning in California.

WHEREAS, the Resources Agency oversees and coordinates the State's activities relating to the conservation, management, and enhancement of California's natural and cultural resources;

WHEREAS, the Secretary for Resources has as her primary mandate in this matter, under Government Code Section 12805.1, to facilitate coordination between CDFG and CCC in a manner consistent with, and in furtherance of, the goals and policies of the California Coastal Act of 1976 and the Natural Community Conservation Planning Act;

WHEREAS, CDFG has as its primary mandate in this matter, under Public Resources Code Section 2800 et seq. and the Fish and Game Code Section 2050 et seq., to implement and administer the Natural Community Conservation Planning Act and the California Endangered Species Act ("CESA");

WHEREAS, CCC has as its primary mandate in this matter, under Public Resources Code Section 30330 et seq., to plan and regulate land and water uses in the coastal zone consistent with the policies of the California Coastal Act;

WHEREAS, pursuant to the Natural Community Conservation Planning Act, CDFG is responsible for assisting local communities to develop Natural Community Conservation Plans ("NCCPs") that must provide for the conservation and recovery of species within the plan area and for the conservation of ecosystems and their function (including natural communities, habitats and biological diversity) based on scientifically sound principles of conservation biology and objective and measurable goals;

WHEREAS, the conservation biology principles used for NCCPs were developed by independent conservation biologists and they include: maximizing structural diversity of conserved areas; conserving unique habitats and habitat features; providing for interconnected blocks of habitat; minimizing impacts to narrow endemic species; identifying the least sensitive areas for other uses; and conserving large blocks of intact

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habitat;

WHEREAS, an important means by which NCCPs provide for the conservation of covered species is the preservation of significant blocks of habitats that are connected by linkages and movement corridors to reduce habitat fragmentation thereby maintaining genetic and demographic interchange between populations and facilitating daily, seasonal and annual movements to breeding, foraging and resting areas;

WHEREAS, the Natural Community Conservation Planning Act requires that an NCCP be developed consistent with federal Habitat Conservation Plans (“HCPs”) prepared pursuant to the federal Endangered Species Act;

WHEREAS, pursuant to Public Resources Code Section 30411 under the California Coastal Act, “the Department of Fish and Game and the Fish and Game Commission are the principal state agencies responsible for the establishment and control of wildlife and fishery management programs and the commission shall not establish or impose any controls with respect thereto that duplicate or exceed regulatory controls established by these agencies pursuant to specific statutory requirements or authorization”;

WHEREAS, the California Coastal Act gives the CCC authority to protect certain resources within the coastal zone, including environmentally sensitive habitat areas (“ESHAs”), wetlands and other waters;

WHEREAS, CCC is responsible for enhancing and restoring the overall quality of the coastal zone environment and its natural and artificial resources while allowing for maximum public access and recreation;

WHEREAS, future coastal habitat conservation planning in California will require protecting larger landscape units, taking into account the distribution and life history requirements of multiple species that require specific habitats;

WHEREAS, it is the intent of the parties that CCC be involved in the review of draft HCPs and NCCPs at the earliest practical opportunity to ensure their consistency with Local Coastal Plans (“LCPs”) and coastal policies;

WHEREAS, it is acknowledged by CDFG and CCC that it is difficult to complete complicated HCPs and NCCPs and that it takes the involvement of many stakeholders for a significant period of time to accomplish these tasks;

WHEREAS, CDFG and CCC desire to fulfill their respective responsibilities by defining the relationship between the two agencies and developing a cooperative process that will ensure the common goal of promoting effective and efficient coastal habitat

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conservation planning that is consistent with the standards and policies of the Natural Community Conservation Planning Act, CESA and the California Coastal Act;

WHEREAS, CDFG and CCC desire that their activities be coordinated in such a manner as to ensure effective, timely and mutually beneficial use of financial and personnel resources; and

WHEREAS, all parties to this MOU recognize that they each have responsibilities under their statutory authorities that cannot be delegated and that this MOU cannot and is not intended to abrogate any of their independent decision-making responsibilities.

NOW, THEREFORE, it is mutually agreed and understood as follows:

1. CDFG and CCC agree that their participation in the processes as set forth in this MOU will in all cases be in good faith and will be characterized by full and open communication regarding the facts, opinions and policies of each agency.
2. As soon as practicable after learning that any person or entity is undertaking a new NCCP planning effort or applying for an incidental take permit pursuant to section 2081(b) ("permit") that CDFG reasonably believes may affect uses or resources of the coastal zone, CDFG shall notify CCC and initiate procedural coordination between these two agencies. CDFG will either provide, or ask the person or entity initiating the plan or permit to provide CCC with available information about the location of the plan or project.
3. In response to notification by CDFG, if CCC determines that the proposed NCCP planning effort or permit affects uses or resources of the coastal zone, CCC shall assign two (2) commissioners to the proposed plan or permit. The commissioners and their staff will participate in CDFG's planning or permitting process, as necessary, including the signing of any planning agreement. CCC shall also inform CDFG and other known interested parties of the boundary of the coastal zone and of any local coastal programs, public works plans, or other plans certified under the California Coastal Act for affected jurisdictions in the area for which the planning process is being discussed.
4. If at any time during the review process CCC determines that a plan or project will not affect uses or resources of the coastal zone, it shall notify CDFG to that effect. In that circumstance, further consultation or coordination pursuant to this MOU will not be required unless the proposed plan or project is subsequently changed in a way that may affect uses or resources of the coastal zone. CDFG will promptly notify CCC of any such changes, so that CCC can determine whether it needs to become further involved in the consultation and coordination process. For a plan or project that requires a federal Endangered Species Act

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section 10(a) permit that CCC has determined will not affect uses or resources of the coastal zone, CCC will provide a written statement that the plan or project is not expected to affect uses or resources of the coastal zone and is therefore not subject to CCC's federal consistency review.

5. CDFG will notify plan sponsors, U.S. Fish & Wildlife Service ("USFWS") and any other interested parties, that CCC staff desires to participate in relevant future meetings regarding the planning or permitting process and its relationship to potential impacts upon coastal zone resources.
6. As the discussions regarding the planning or permitting process continue, CCC staff will use its best efforts to obtain and provide to the participants any applicable land use, coastal resource, and geographic information and to identify for the participants all foreseeable potential impacts on uses or resources of the coastal zone that CCC reasonably believes may be inconsistent with coastal policies. Information provided may include, but is not limited to: 1) applicable policies from the Coastal Act, certified LCPs and other certified plans; 2) applicable maps from these certified plans including some or all of Habitat/Sensitive Resource Protection Maps, Land Use Designation and Zoning Maps, Visual Resources/Significant Viewshed Maps, Public Access and Recreation Maps, and Hazard Maps; and 3) applicable development history, including past coastal development permit applications and permits within the area under discussion.
7. ***[CCC placeholder: Need to discuss, elaborate and specify the manner and scope of CCC staff's review of CDFG's habitat evaluation process as it relates to impacts to uses or resources of the coastal zone. The scope of CCC's review may vary depending on the scale and detail of the plan or permit being considered.]***
8. When a draft plan or permit is provided to CCC for review of impacts to uses or resources of the coastal zone, CCC staff will prepare and submit an initial issue identification document to CDFG, USFWS (if applicable) and the agency initiating the plan or permit application, within sixty (60) days of when CCC is provided the plan or permit information. The issue identification document will identify the various issues involving potential impacts to uses or resources of the coastal zone that may be raised by the NCCP plan or permit, and the potential regulatory approvals that may be necessary from CCC. Specific issue areas to be discussed in this document may include, as applicable: an indication of all potential coastal zone wetlands and ESHAs to the extent known within the boundaries of the NCCP plan or project; the appropriateness of land uses proposed, if any, in relation to California Coastal Act preferred uses or previously approved uses under certified LCPs; potential density and intensity of

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development (area build-out) for plans or permits that include specific land use development proposals; a discussion of the other relevant Chapter 3 policies or certified LCP policies; options for NCCP enforceability **[NEED TO DISCUSS]**; identification of particular geographic areas within the plan or permit area that raise potential problems for CCC development approval; and potential timing of future appropriate CCC approvals. This issue identification document, together with appropriate maps of the area(s) to be covered by the NCCP plan or permit, will be agendaized for Commission review and action **[NEED TO DISCUSS TIMING FOR COMMISSION REVIEW]**

9. Planning agreements that are signed for NCCP plans that may affect uses or resources of the coastal zone will include a section discussing potential issues associated with the coastal zone.
10. **[CDFG placeholder: Need to address in detail how CDFG and CCC will resolve conflicts that might occur in CDFG's application of NCCP or CESA standards and CCC's application of Coastal Act policies. What can be said about designation of ESHAs, wetland impacts, etc.]**
- 10.1 When deciding whether to designate habitat or potential habitat for sensitive species as an ESHA, CCC will include in its consideration the following factors: the size of the area and habitat linkages or connectivity to other habitat areas; whether the area will provide viable habitat over time; and whether preservation of the area has the potential to create a habitat "sink" that is detrimental to species.
11. The CCC shall provide plan sponsors, CDFG and USFWS with timely feedback regarding plans and permits it reviews, and to schedule any required CCC action or report at the earliest practicable date, with the goal of minimizing delays in development of and final approval of the plans and permits. More or less coincident with adoption of the plan or signing of the Implementation Agreement, plan participants that need CCC approval for planning documents or for proposed development activity will submit those matters for CCC review and approval. Where both an LCP amendment and a consistency certification are required, the CCC will process these and schedule them on the same agenda, so that all approvals can occur at one CCC meeting.
12. The CCC's review and approval of an LCP that contains specific development standards and includes an HCP/NCCP shall function as a consistency concurrence for purposes of section 307 of the Coastal Zone Management Act.
13. Policy, planning or other issues or disputes which are resolved during discussions among the staff of CCC, CDFG, the proponents of individual

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HCP/NCCPs and agencies of local or the federal government and which form part of the basis of a draft HCP/NCCP will be submitted to the Director of CDFG and CCC with a recommendation of approval.

14. Pursuant to Section 12805.1 of the Government Code, the Secretary for Resources Agency shall facilitate coordination between CDFG and CCC in a manner consistent with, and in furtherance of, the goals and policies of the California Coastal Act of 1976 and the Natural Community Conservation Planning Act as follows:
 - a) In the event of a serious disagreement between CDFG and CCC regarding the goals and policies of the California Coastal Act of 1976 and the Natural Community Conservation Planning Act, including any disputes arising out of this MOU, either party may request the Secretary to provide mediation.
 - b) CDFG or CCC may notify the Secretary in writing of the existence of a serious disagreement, and may request mediation. The request for mediation shall be accompanied by a statement in support of the parties' position, along with supporting data and information. Concurrent with the request, a copy of the written request and accompanying documents must be sent to the party with which the requesting party disagrees. Within fifteen (15) days following receipt of a request for mediation, the disagreeing party shall transmit a written response to the Secretary, and to the party requesting mediation.
 - c) The Secretary shall schedule a mediation conference to be attended by representatives from the Resources Agency, CDFG and CCC, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least ten (10) days notice of the time and place set for the mediation conference.
 - d) Mediation shall terminate (1) at any time the parties agree to a resolution of the serious disagreement, (2) if one of the parties withdraws from mediation, (3) in the event the parties fail to reach a resolution of the serious disagreement within thirty (30) days following Secretarial conference efforts, and the parties do not agree to extend mediation beyond that period, or (4) for other good cause.

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- e) The availability of the mediation service provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes.
 - f) Following consideration of the mediation conference, the Secretary shall issue an advisory statement in writing to the parties; the advisory opinion shall include the basis for such finding.
 - g) The Secretary may choose to initiate mediation at anytime. The Secretary's decision to mediate may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate mediation, notification shall be sent to the parties. The notice shall include a statement describing the reasons for the mediation and shall contain a request for submission of detailed comments to be submitted within fifteen (15) days from receipt of the notification. Copies of the comments shall be exchanged among the parties.
 - h) Examples of issues for mediation _____ ***[DISCUSS]***
15. This MOU shall be effective as of the date it is signed by all parties and shall remain in effect until terminated by mutual consent of the parties in writing.
16. This MOU may be amended with the mutual consent of all parties in writing.
17. For the purpose of implementing this MOU, CDFG and CCC shall designate a contact person for consultation and coordination with the other party, and shall inform the Resources Agency of the designated person's name, phone number, facsimile number, and business address.
18. All parties further agree to take whatever steps they deem necessary, including additional agreements, in order to fulfill the purposes of this MOU.